



U.S. Department of Justice

Immigration and Naturalization Service

B3

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC 98 165 52443 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:

NOV 8 2000

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

Public Copy

IN BEHALF OF PETITIONER:

Identifying information is redacted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

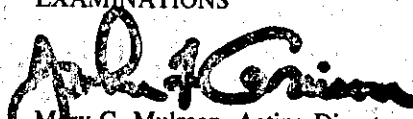
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a high performance transmission technology firm. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a DSP firmware engineer. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher, or that the beneficiary has the required three years of experience in teaching and/or research in the academic field.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

The first issue in contention is whether the beneficiary's work is internationally recognized as outstanding. Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The

petitioner must meet at least two of six stated criteria. The petitioner claims to have met the following criteria:

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

[REDACTED] Associate Editor, IEEE [REDACTED] states, in a letter, that the beneficiary had reviewed a paper, "Shift Covariant Time-Frequency Distributions of Discrete Signals," for the IEEE [REDACTED]. The record contains just this one reference regarding the beneficiary's participation as the judge of the work of others in the same or an allied academic field. The petitioner has not shown that this type of peer review of submitted manuscripts represents a privilege reserved for internationally recognized scientists, rather than a fairly routine duty for those in the profession.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Because the purpose of these regulatory criteria is to establish that the beneficiary enjoys an international reputation as an outstanding researcher, the evidence submitted to fulfill the criteria must, to some extent, demonstrate such a reputation.

Counsel lists the beneficiary's "participation in conferences," but does not establish that presentations at professional gatherings reflect, or cause, international recognition. Frequently during these conferences, a very substantial number of researchers offer presentations, sometimes in the thousands.

Several witness letters attest to the beneficiary's work. [REDACTED] Professor, [REDACTED] states:

. . . The research assistantship . . . required Mr. [REDACTED] to work on a project funded by the US Air Force. This project involves development of smart adaptive radio technology to improve the jam resistance capability of system network operations in strategic, tactical, land, air, and space environments assuming both secure as well as high probability of intercept scenarios. In this research, Mr. [REDACTED] applied sophisticated jammer excision and nulling techniques to mitigate smart, rapidly time-varying interference and reduce its effect on the communication signals carrying both radio and audio information. These techniques can be also used to eliminate multipath, reflected signals, which may cause severe degradation, or in some cases, cancellation of the desired signal. Mr. [REDACTED] devised excision methods which are based on jammer characteristics in the time-domain, frequency-domain, and time-frequency domain. The latter reveals the jammer

nonstationary characteristics and provides accurate information on its poser localization in both time and frequency. In turn, we are not able to remove the nonstationary jammer with minimum distortion of the desired signal. Because of his talents and hard work, the Air Force (Rome Lab) has increased his stipend by 25% the second year.

[REDACTED] Ph.D., P.E., Department of the Air Force, [REDACTED], asserts:

. . . By virtue of my background, I am in a position to judge [REDACTED] abilities against those of other professionals in the field and I can certify that he has distinguished himself as an exceptional talent.

It was over two years ago that [REDACTED] began working on a contract I initiated with [REDACTED] and Professor [REDACTED] to study potential applications of time-frequency distributions to spread spectrum communications systems. Since that time I have not ceased to be impressed with Mr. [REDACTED] diligence and tenacity for solving complex problems. Through his efforts, under the direction of his advisor, Dr. [REDACTED] we have obtained very valuable insight into the usefulness of time-frequency representations for digital communication.

Specifically, he provided the mathematical analysis of the system including the very complex received-signal model, and then proceeded to design adaptive digital notch filters that very effectively excise narrowband noise and hostile interferers. The resulting system has improved performance for radios used in the battle theater by our warfighters in the air, in the sea, and on the ground.

[REDACTED] Director of Advanced DSP Development, [REDACTED] states:

I am writing this recommendation on behalf of Mr. [REDACTED] who participated in algorithm development in the advanced DSP group in [REDACTED] semiconductor since June 97 as a signal processing expert. During this period, [REDACTED] was responsible for studying the latest high-speed modem algorithms for subscriber line applications, DSL. For his study [REDACTED] had to do theoretical analysis as well as extensive modeling of timing recovery system which include jitter and wander analysis in a T1 and E1 transmission network. Mr. [REDACTED] outstanding contribution to the study resulted in a patent application, "System and Method for External Timing Using a Complex Rotator." The patent was filed in 1/27/98.

Mr. [REDACTED] timing recovery has proven to be very valuable to the development of our next generation transceiver

technology. In addition to his understanding work in the area of timing recovery, [REDACTED] participated in the design of our next generation DSL transceiver technology which includes a programmable DSP for network timing and framing generation and detection.

Because of Mr. [REDACTED] prominent contributions and achievements in the area of Timing recovery and network framing, he was recognized by our organization as an outstanding DSP developer and his work had a direct contribution to establishing [REDACTED] as a leader in high-speed DSL transmission.

All of the above witnesses instructed, collaborated, or employed the beneficiary, and, therefore, their statements are not evidence that the beneficiary has earned a broad reputation. The narrow range of witness letters does not persuasively establish that the beneficiary's accomplishments are well-known among that vast majority of computer scientists who have no affiliation with him.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

Counsel asserts that the beneficiary has been published in "IEEE [REDACTED]" one of the most important international journals in the academic field. The initial submission, however, contained little evidence about this journal.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

Counsel claims that there are articles which have been published in a professional publication written by others which references the work of the beneficiary.

Footnoted citations, or brief mentions in articles, do not indicate that the articles are about the aliens's work. The purpose of this criterion is to show that the beneficiary's work has attracted such notice in the international research community that some researchers have subjected the beneficiary's work to in-depth analysis, criticism and discussion. While footnoted citations have value in showing that other researchers have referred to the beneficiary's work, those citations do not elevate the beneficiary above the countless other published researchers whose work is cited in thousands of scholarly journals each year.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

The beneficiary claims membership in the Institute of Electrical and Electronics Engineers, Inc. The record contains no evidence that membership in this association is restricted to researchers who have exhibited outstanding achievements. Membership in organizations where membership is open to all dues-paying participants cannot qualify the beneficiary under this restrictive criterion.

The director determined that the petitioner has not shown that the beneficiary's work is widely recognized beyond those institutions where the beneficiary has worked or studied. On appeal, the petitioner submits an additional witness letter.

Professor and Director, Digital Signal Processing Research Laboratory, states:

While I do not know Mr. on a personal basis, a common professional interest in instantaneous frequency estimation connects us. This resulted in our citing of some work done by Mr. and his co-authors.

I then learned that Mr. had been quite involved in this research area. This work resulted in a number of journal and conference papers. Having been an Associate Editor of the IEEE

(at that time), I fully recognize the quality of Mr. journal papers. His papers at the Asilomar and ICASSP conferences, and in the Signal Processing Workshop, provide further evidence of the acceptance of Mr. research work by his peers. All of the above are the most prestigious venues for dissemination of research results, for the worldwide community of signal processing researchers.

When contemplating this endorsement, we must consider that Mr. has merely cited the beneficiary's work in his own publications or attended the beneficiary's presentations at conferences. A letter from a contemporary, which praises the beneficiary's work, does not establish that the beneficiary and his work are generally recognized among researchers internationally. Furthermore, Mr. provided no evidence which corroborates his statement that "All of the above are the most prestigious international venues for dissemination of research results, for the worldwide community of signal processing researchers." Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record shows that the petitioner, the beneficiary's professors, and the beneficiary's collaborators think highly of the beneficiary's work, and that the beneficiary's efforts have

attracted some degree of notice on a wider scale. The record stops short, however, of demonstrating that the beneficiary's work is recognized internationally as outstanding. Assertions about the value or potential applications of the beneficiary's work do not establish or imply international recognition. We affirm, therefore, the director's finding that the petitioner has not established that the beneficiary's work is internationally recognized as outstanding.

The other issue in this proceeding is whether the beneficiary has accumulated the three years of research experience required by section 203(b)(1)(B)(ii) of the Act. 8 C.F.R. 204.5(i)(3)(ii) describes the necessary experience:

Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

The beneficiary in this case received his Master of Science in Electrical Engineering from [REDACTED] on [REDACTED] less than a year before this petition was filed on May 15, 1998. According to his resume, prior to receiving this degree, the beneficiary was employed as a project manager at [REDACTED] for approximately thirteen months. Therefore, the petitioner must demonstrate that the beneficiary has over two years of student research experience which the academic field has recognized as outstanding.

The director requested additional evidence that the petitioner has met this burden. In response, the petitioner has submitted three letters. One of these letters is from [REDACTED] Director of Advanced DSP Development, [REDACTED] who states that the beneficiary has "participated in algorithm development in the advanced DSP group in [REDACTED] semiconductor since June 97 as a signal processing expert." Mr. [REDACTED] also asserts that the beneficiary's "timing recovery has proven to be very valuable to the development of our next generation transceiver technology. . . he was recognized by our organization as an outstanding DSP developer and his work had a direct contribution to establishing [REDACTED] as a leader in high-speed DSL transmission." In this instance, the beneficiary's work is primarily recognized by and benefits the petitioner solely. There is no evidence which establishes that the work completed by the beneficiary while working at [REDACTED] is internationally recognized as outstanding.

██████████ Professor and Chairperson of Department of Electrical and Computer Engineering asserts:

This letter is in proof of Mr. ██████████ two-year research experience in the Department of Electrical Engineering at ██████████. From 8/95 to 5/97, Mr. ██████████ who was also a graduate student here worked as a research assistant under a contract with US Air Force (Rome Lab) supervised by Dr. ██████████.

This research work involves development of smart adaptive telecommunications technology to improve the jam resistance capability of system network operations in strategic, tactical, land, air, and space environments assuming both secure as well as high probability of intercept scenarios.

Professor ██████████ has not provided any evidence which demonstrates that the beneficiary's work is considered internationally outstanding nor does he make any statement to that fact in his letter. Simply completing one's requirements for obtaining a master's degree does not bestow international acclaim upon the person seeking to satisfy this goal.

██████████ Smart Radio Technologies R&D, Rome Laboratory.
states:

It was over two years ago that ██████████ began working on a contract I initiated with ██████████ and Professor ██████████ to study potential applications of time-frequency distributions to spread spectrum communication systems. Since that time I have not ceased to be impressed with Mr. ██████████ diligence and tenacity for solving complex problems. Through his efforts, under the direction of his advisor, Dr. ██████████ we have obtained very valuable insight into the usefulness of time-frequency representations for digital communication.

This research requires solid knowledge of mathematics, communications theory, signal processing and other relevant fields. With this consideration, I believe it is in our best national interest to retain highly skilled individuals like Mr. Wang on a permanent basis. Engineers of his caliber and experience can help sustain the critical mass of scientists needed to maintain our leadership in military warfare and information dominance well into next century.

These statements demonstrate faith in the beneficiary's aptitude, but cannot reasonably be construed as having any greater significance. These statements do not establish that the beneficiary is recognized internationally as outstanding. None of these witnesses (all of whom are U.S.-based or worked with the beneficiary in the U.S.) provide first-hand, verifiable

evidence to show that the beneficiary enjoys significant recognition outside of the United States. Without such evidence, there is nothing concrete to show that whatever recognition the beneficiary has earned is "international." Therefore, the director denied the petition.

On appeal, counsel submits another copy of the letter from [REDACTED] and a letter from [REDACTED] Deputy General Manager, [REDACTED]. In his letter Mr. [REDACTED] states:

Mr. [REDACTED] was working in our Research and Development Department from 8/93 to 7/94 as a Software Engineer. He was one of our major research members to develop advanced data communication technologies. His research achievements have contributed greatly to our success in this industry.

Here again, the work performed by the beneficiary and his ensuing reputation is a direct result of his employment by this company. There is no evidence which establishes that as a result of his performance, he enjoys international recognition.

Most of the witnesses cited by counsel represent the petitioner itself and individuals who have worked with the beneficiary. These witnesses have enthusiastically embraced the beneficiary's research work. The record does not show this same reaction throughout the international community. Occasional citations by independent researchers show acceptance of the beneficiary's work, but do not inherently elevate that work above the research of countless others who have published internationally.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in the field of electronic engineering. The beneficiary, at the time of filing, had less than one year of non-student employment experience as a researcher. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

Beyond the decision of the director, another issue that must be addressed is whether the position offered to the beneficiary constitutes "research." The beneficiary's present position appears to be, essentially, as an engineer who uses existing principles and technology to solve practical problems rather than someone who engages in scholarly or advanced theoretical research that is comparable to the work of researchers at universities or other institutions of higher education. The standard for what constitutes research must be more stringent and independent than simply the petitioner's attestation that the beneficiary's work constitutes research.

The petitioner has not shown that the beneficiary's current duties involve adding new information to the global body of basic knowledge in his field. Rather, the beneficiary's work that the petitioner labels research appears to amount to various stages of product design. While engineering and design share some degree of common ground with research, there is nevertheless a distinction between the various occupations. The beneficiary's very job title, "DSP Firmware Engineer," supports the finding that the beneficiary is an engineer designing specific products, rather than a researcher exploring the theoretical underpinnings of such products. It is evident, therefore, that the beneficiary's occupation is not a full-time research position.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in his field. The petitioner has not shown that the beneficiary possessed the required three years of experience in teaching and/or research in the academic field. The duties of the position offered to the beneficiary appear to be more akin to design and engineering functions than to scholarly research. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.